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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/769,076    01/25/01    KRYSIK

M    P/35-4

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| EXAMINER |
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| VALENTI, A |              |
|------------|--------------|
| ART UNIT   | PAPER NUMBER |

3643  
DATE MAILED:

11/07/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

|                              |                               |                               |  |
|------------------------------|-------------------------------|-------------------------------|--|
| <b>Office Action Summary</b> | Application N .<br>09/769,076 | Applicant(s)<br>KRYSIK ET AL. |  |
|                              | Examiner<br>Andrea M. Valenti | Art Unit<br>3643              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2001.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 1-25, 46, 48, and 49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-45, 47 and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>1</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, 46, 48, and 49, drawn to colored and fragranced seed, classified in class 47, subclass 57.6.
- II. Claims 26-45, 47, and 50, drawn to colored and fragranced mulch, classified in class 47, subclass 9.

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as sowing seeds. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Philip M. Weiss on 31 October 2001 a provisional election was made without traverse to prosecute the invention of colored and fragranced mulch, claims 26-45, 47, and 50. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-25, 46, 48, and 49 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- 1.) None of the reference signs were mentioned in the specification.

Correction is required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the mulch must be shown or the feature(s) canceled from the claim(s), none of the figure flow charts nor the Brief Description of Drawings section of the specification identify mulch. No new matter should be entered.

### ***Claim Objections***

Claims 27-30, 36-38, and 40-42, are objected to because of the following informalities:

Regarding Claim 27, applicant's use of the acronym 'NPK' does not particularly point out and distinctly claim the subject matter. Therefore, 'NPK' should be changed to --nitrogen, phosphorous, and potassium--

Regarding Claims 28, 29, 30, 36, 40, 41, and 42, examiner suggests replacing 'assists' with --indicates--

Regarding Claims 36, 37, and 38, it appears that applicant intended to reference claim 26 instead of 'claim 25' for dependency since claim 26 refers to the mulch and claim 26 refers to seeds.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's 'and/or' combination renders the claim vague and indefinite. It is not clear to the examiner whether the applicant intends to claim the alternative glycerin or water in combination with colorant or if applicant intends to claim glycerin alone alternatively to water and colorant.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-33, 35-38, 47, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,252,785 to Frank D. Hoblit.

Regarding Claims 26, 33, and 47, Hoblit discloses a colored mulch product consisting essentially of a material comprising a fiber cellulose, clay, loam, sand, and/or a combination of same (Col. 2 line 17-19); a binding agent (Col. 5 line 15-25, Col. 8 line

5-6); a environmentally friendly dye and/or pigment (Col. 3 line 22-24), and the colored mulch product is produced by an agglomeration operation (Col. 3 line 59).

Regarding Claims 27 and 50, Hoblit discloses NPK fortifiers (Col. 3 line 3-4) and the colored mulch inherently fades or disappears in response to a lack of nutrient or fertilizer in the mulch.

Regarding Claim 35, Hoblit teaches the mulch is capable of deterring animals from eating a seed (Col. 2 lines 47-51).

Regarding Claims 28, 29, and 30, the mulch taught by Hoblit inherently assists a user in determining the acidity of soil, the moisture content of soil, the chemical content of soil since the dye will inherently change shades once applied to the soil surface as a result of environmental influences that are proportional to the acid, moisture, and chemical characteristics of the soil.

Regarding Claim 31, Hoblit teaches that the dye is selected from a group consisting of acid, base, or direct dye concentrates (Col. 3 lines 20-32).

Regarding Claim 32, the dye of Hoblit is inherently florescent since all colors to some extent fluoresce when exposed to UV light.

Regarding Claims 36 and 37, the mulch taught by Hoblit inherently assists the seed in absorbing heat and reflects sunlight based on old and well-known heat transfer fundamentals. In other words, the mulch provides a protective heat retaining layer for the soil and the darker the color of the mulch the more heat it will absorb since the emissivity of the mulch approaches one and thus providing more available heat for the seed. Furthermore, the mulch will inherently reflect sunlight since the color of the mulch

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determines the absorbed wavelengths and unless it is completely black the mulch will inherently reflect some amount of light.

Regarding Claim 38, Hoblit teaches that the mulch is the same or similar color of an actual plant, flower, fruit or vegetable of a seed planted with the mulch (Col. 3 line 27-32).

Claims 39-45 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,105,577 to Gary W. Hedges.

Regarding Claims 39, 40, 41, and 42, Hedges discloses a fragranced mulch comprising mulch product and a fragrance (Hedges Col. 3 line 63-67). Furthermore, Hedges fragrant mulch inherently assists a user in determining the acidity of soil, moisture content of soil, chemical content of soil since the fragrance will inherently change once applied to the soil surface as a result of environmental influences that are proportional to the acid, moisture, and chemical characteristics of the soil.

Regarding Claims 43, 44, and 45, Hedges discloses that the fragrance is selected from a group consisting of a floral fragrance, a natural fragrance or cocoa (Hedges Col. 3 line 65-66), the fragrance is inherently approved for use in products directly applied to the skin since many household soaps and detergents have pine, lemon, and cinnamon odor additives, and the fragrance provides a scent, which can take on a scent similar to a scent of a product applied.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,252,785 to Frank D. Hoblit in view of U.S. Patent No. 4,932,156 to Roger C. Underwood.

Regarding Claim 34, Hoblit teaches water and a dye, but is silent on the dye comprising glycerin. However, Underwood teaches the importance of glycerin in dye for mulch (Underwood Col. 2 lines 30-34, Col. 3 lines 15-18). It would have been obvious to one of ordinary skill in the art to use glycerin in the dye since Underwood teaches that glycerin is an old and well-known dye component used to achieve desired color intensity.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 3,645,714 discloses a mulch and fertilizer combination.

U.S. Patent No. 3,876,411 discloses a clay mulch with fertilizer, dye, and sulfur which acts to both color the mulch and deter animals.

German Patent No. 4017334A1 discloses a colored fiber mulch




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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
November 2, 2001

  
**PETER M. POON**  
SUPERVISORY PATENT EXAMINER  
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